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IN THE UNITED STATES SUPREME COURT

OCTOBER, 1980 TERM

MCKINLEY TAYLOR, individually and
on behalf of all persons similarly situated **PETITIONER**

VS.

ROADWAY EXPRESS, INC. **RESPONDENT**

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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Counsel For Petitioner

QUESTIONS PRESENTED

The Writ of Certiorari is requested in order that This Honorable Court might consider the following questions of continuing importance to the development of employment discrimination law.

(1) CAN PERSONAL CHARACTERISTICS OF AN EMPLOYEE RELATING TO PAST PERSONAL CONDUCT AND PAST EMPLOYMENT HISTORY, WHICH ARE KNOWN TO THE EMPLOYER AT THE TIME OF HIRE SUPPLY A LEGITIMATE NON DISCRIMINATORY REASON FOR TERMINATION SUFFICIENT TO REBUT A PRIMA FACIE SHOWING OF RACIAL DISCRIMINATION?

(2) IS THE COMPLAINANT'S BURDEN OF PROOF IN AN EMPLOYMENT DISCRIMINATION ACTION AFFECTED BY A PRIOR JUDICIAL DETERMINATION OF EMPLOYMENT DISCRIMINATION PRACTICED BY HIS EMPLOYER?

(3) IS THE PRETEXTUAL NATURE OF THE PROFFERED REASONS FOR EMPLOYER ACTION SUSCEPTIBLE TO ESTABLISHMENT AS A MATTER OF LAW?

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TABLE OF AUTHORITY

McDonnell Douglas Corp. v. Green
411 US 792 (1973) 7, A-1, A-2, A-9

OPINIONS BELOW

The opinions of the District Court and The Court of Appeals are both unreported. They are attached to the Appendix.

GROUNDS FOR INVOKING THE JURISDICTION OF THIS COURT

This is an employment discrimination case filed pursuant to 42 USC Section 1981 and 42 USC Section 2000e, **et.seq.** This Court is asked to review the Judgment of the United States Court of Appeals for the Fifth Circuit which was rendered on November 5, 1980 and Petition For Rehearing was denied on January 2, 1981.

STATUTORY PROVISION AUTHORIZING JURISDICTION

28 USC Section 1254 provides in pertinent part:

Cases in the Courts of Appeals may be reviewed by the Supreme Court by the following methods. . . by writ of certiorari granted upon the Petition of any party to any civil or criminal case, before or after rendition of judgment or decree,

STATUTES INVOLVED

42 USC Section 2002e provides

It shall be an unlawful employment practice for an employer (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions or privileges of employment, because of such individual's race, color religion, sex or national origin. . .

42 USC Section 1981 provides:

All persons within the jurisdiction of the United States shall have the same right in every state and

Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses and exactions of every kind, and to no other.

STATEMENT OF THE CASE

A. Course of Proceedings below:

The plaintiff, McKinley Taylor, (hereinafter, "Taylor") filed two complaints in the United States District Court for the Southern District of Mississippi accusing his former employer, Roadway Express, Inc. (hereinafter, "Roadway") of racial discrimination in employment because of Roadway's failure to hire him as a permanent employee and because of his discharge during his period of probationary employment purportedly for reasons known to Roadway at the time of Taylor's initial hire.

In his first complaint in No. J78-0174, Taylor invoked the jurisdiction of the District Court pursuant to 42 U.S.C. Section 1981 and 28 U.S.C. Section 1343(4). Taylor alleged that he applied for work with Roadway and was hired as a truck driver but that after working 26 days, Taylor was discharged without receiving any complaints about his performance. The complaint further alleged that Taylor sought reinstatement on numerous occasions which was refused on all occasions and further that Taylor was refused any explanation for his discharge. Taylor asked the Court to grant a preliminary and permanent injunction, reinstatement, back pay and compensatory seniority, court costs and attroneys fees. (R.3)

In answering the first complaint, Roadway admitted that Taylor applied on January 25, 1978 and was hired on a probationary basis on February 22, 1978. Roadway further admitted that Taylor worked approximately 26 days as a probationary employee but was terminated during his probationary period. Roadway further admitted that Taylor possessed the technical skills to operate a truck but was not qualified to work for Roadway. Roadway then proceeded to enumerate a number of factors in Taylor's background which it contended supported its decision. It was established however, that all of these factors were

known to the company before Taylor began to work for the company and that Roadway's hiring official had nonetheless found Taylor qualified.

Taylor's second complaint was filed pursuant to Title VII of the Civil Rights Act of 1964, as amended, and was filed as a class action. The parties having presented the same claims and defenses as under the 1981 action, the two actions were consolidated by the District Court and tried jointly after the parties had conducted discovery and the Court had refused to certify the action as a class action.

After the trial beginning September 18, 1979 and continuing until September 21, 1979 before the Honorable John R. Countiss III, United States Magistrate, the Magistrate entered his report and recommendation on October 5, 1979. In that report which was subsequently adopted by the District Court, the Magistrate found that Taylor had established a **prima facie** case of racial discrimination but that the defendant Roadway had articulated a legitimate, nondiscriminatory reason for Taylor's discharge and that Taylor had not shown such reason to be pretextual. (R.192) The Report noted that:

> *while plaintiff's termination may have been a matter of poor judgment, or based on requirements arguably not functionally related to the job, or simply as plaintiff stated, a "mistake", it has not been shown that race was a factor in the decision. Denton did not know Taylor and had no reason to hold ill feelings against him.*

The decision of the District Court was affirmed by the Court of Appeals on the ground that the evidence supported the lower Court's factual findings to the extent that the judgment would not be disturbed.

B. Statement of the Facts.

McKinley Taylor, a college graduate, filed a job seeker

application form with Roadway expressing interest in employment as an over-the-road truck driver at defendant's Meridian, Mississippi terminal on or about January 21, 1978. However, he was not contacted until he again contacted the Company expressing his interest in employment. Approximately two weeks later, Taylor took the next step in the hiring process and completed an application for employment. The Report and Recommendation of the United States Magistrate found:

> *By February 21, 1978, all preemployment forms including the PR15 (Request for employment information from plaintiff's last employer) were completed and plaintiff began work as a probationary road driver on February 22, 1978.*
>
> *On March 6, 1978, Gary R. Denton assumed the duties of the Manager of District VII with jurisdiction over the Meridian, Mississippi facility.*

Denton reviewed Taylor's personnel file and as the Magistrate found, "certain matters gleaned from Taylor's personnel file led Denton to conclude that although Taylor possessed the technical skills necessary to operate a truck, he did not compare favorably with Roadway's ideal standards for over-the-road drivers and that better qualified personnel could be found.

Not all of the probationary employees who had not yet become permanent were subjected to this review by Denton or any other company official.

The Magistrate also found that the defendant Company was party to a consent Order ordered in United States of America v. Roadway Express, No. 68-321 in the United States District Court for the Western District of Ohio and that the Consent Order expressly stated:

No applicant shall be disqualified on the basis of any requirement that is not functionally related to the job for which the applicant is being considered, or is more stringent than necessary to perform the job.

ARGUMENT

Reasons For Granting The Writ.

The Writ of Certiorari should be granted in this case in order that this Court might address important questions of recurring concern in the area of employment discrimination law. Such questions raised by the instant case involve the propriety of an employer's reliance on characteristics already passed upon to justify a discharge of a probationary employee where the quality of job performance is not in issue, the effect which a pending consent decreee has on the burden of proof in employment discrimination cases, and whether pretex as defined in the **McDonnell Douglas** decision can ever be shown as a matter of law.

In the instant case Taylor was hired as a probationary employee, obviously, this meant that his qualifications had been examined and found acceptable. Indeed, there seems to be no dispute about Taylor's qualifications in the only pertinent sense in which that term is used in this area of the law. **McDonnell Douglas Corp. v. Green, 411 US 792 (1971)** implicity defined qualifications as an ability to perform the job:

> *Petitioner sought mechanics, respondent's trade, and continued to do so after respondent's rejection. Petitioner, moreover, does not dispute respondent's qualifications and acknowledges that his past work performance in petitioner's employ was "satisfactory."*

Unlike the respondent in **McDonnell Douglas,** Petitioner herein was discharged because of matters developed in a background check which were thus known to the employer before Petitioner was hired. To permit an employer to mask discrimination by relying on matters on which it had

opportunity is provided when an employer can whenever it suits his fancy justify a discharge on the basis of undesirable traits in the employee's preemployment history, regardless of the quality of the work the employee is currently performing. This Court should grant the Writ in this case and hold that such retroactive rejections are impermissible.

The District Court failed to find one way or the other as to whether Roadway had violated the Consent Decree in failing to hire Taylor. Specifically the Court failed to deal with the issue of whether Taylor was rejected on the basis of requirements not functionally related to the job or requirements more stringent than necessary to perform the job. Obviously Taylor ws mistreated in this way under the consent order. It was not disputed that for every undesirable trait that Taylor possessed, the company tolerated in another employee. It is Taylor's position that the mere existence of the consent order should have been given more consideration in the following respects; to buttress Taylor's Prima Facie case, to define and limit the permissible scope of the possible considerations articulated by defendant in rebuttal of considerations that would not in themselves violate the consent decree, and finally to strengthen the plaintiff's proof on pretext.

The effect of a consent decree or other resolution of prior suits, including class actions on subsequent litigation should be more fully explicated by this Court in order, **inter alia** that the purposes of Rule 23 of the Federal Rules of Civil Procedure might be fully effectuated.

Finally, this case involved very strong proof of pretext. As noted above, the company refused to tell Taylor why he was rejected as a permanent employee and discharged as a probationary employee. It was shown at trial that in doing so, the company acted pursuant to a policy of refusing to tell applicants why they are rejected because that would limit the Company's basis for defending a charge of

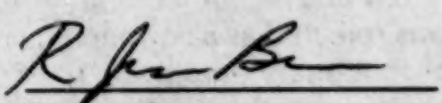
discrimination, and preclude the Company from using any other information in the applicant's file which would justify disqualification. Thus the Company admitted that it had a policy of preserving its option to present pretextual reasons for the rejection of an applicant. The record is clear that Roadway's District Manager pursued that Company policy in this case. Taylor was not told why he was discharged. At trial, the Company did rely on anything it could find in Taylor's file including the questioning of the objective determination of Taylor's weight and blood pressure by the Company's own physician. Moreover there was no dispute that the Company retained employees who had engaged in acts of comparable seriousness, indeed in some cases greater seriousness than the offenses alleged against Taylor. These factors along with the Consent decree which showed a former determination of discrimination were classic indications of the pretextuality of the decisions advanced by Roadway. Neither the District Court nor the Court of Appeals gave any reason why these factors did not establish pretext.

Petitioner contends that everything short of an admission of pretext was shown in this case and that pretext should have been found as a matter of law.

CONCLUSION

For the foregoing reasons Petitioner prays that this Honorable Court will grant the Writ requested so that the important questions raised below might be considered in this Court.

Respectfully Submitted,



R. Jess Brown
Firnist J. Alexander, Jr.
P.O. Box 1326
Jackson, Mississippi 39205

CERTIFICATE OF SERVICE

I hereby certify that I have this day mailed a true and correct copy of the foregoing Petition For Writ of Certiorari to M. Curtiss, McKee, Esquire, 2100 Deposit Guaranty Plaza, Jackson, Mississippi.

This the 3 day of March, 1981.

R. Jess Brown

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

UNIT A

No. 79-3843
Summary Calendar

MCKINLEY TAYLOR, individually and on behalf of all persons similarly situated,

Plaintiffs—Appellants,

versus

ROADWAY EXPRESS, INC.,

Defendant-Appellee.

Appeal from the United States District Court for the Southern District of Mississippi

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(NOVEMBER 5, 1980)

Before GEE, RUBIN and RANDALL, Circuit Judges.

PER CURIAM:

Appellant Taylor, an over-the-road truck driver, appeals from an adverse judgment in this Title VII case. During his probationary period as a driver, a new district manager who took office after the initial hiring of Taylor reviewed his and other personnel files of probationary and prospective drivers. Concluding that Taylor, although technically qualified to drive a truck, was not a desirable employee for other reasons, he discharged him. Applying the tests of **McDonnell Douglas Corp. v. Green,** 411 U.S. 792 (1973),

the trier of fact determined that Taylor's prima facie case of discrimination was rebutted by legitimate, non-discriminatory reasons for his discharge, reasons which Taylor failed to prove pre-textual.

Among these reasons were what the new manager reviewed as discrepancies in Taylor's job application and interview, as well as his admission of trivial thefts from previous employers, a discharge for refusing to work on a holiday and friction with his most recent employer, admitted repeated use of marijuana, drinking beer on a previous job, and two reckless driving arrests. Files of 29 other, permanent, employees produced at trial revealed the presence of one or more of these undesirable traits or incidents, but none contained so many as plaintiff's. A consent order under which appellee operated forbade it to disqualify job applicants for requirements not functionally related to the job or more stringent than necessary for its performance. Finding the above matters on sufficient evidence, the court below concluded that the reasons given for Taylor's discharge were legitimate and appropriate, in toto, to justify his discharge as a non-discriminatory one. It found as well that he had failed to establish pretext. The evidence supporting these findings, we cannot disturb them.

The refusal to certify the cause as a class action must, however, be reconsidered, in the light of the decisions of the United States Supreme Court in **United States Parole Commission v. Geraghty,** 445 U.S. _____, 100 S.Ct. 1202, _____ L.Ed.2d _____ (1980), and **Deposit Guaranty National Bank v. Roper,** 445 U.S. _____, 100 S.Ct. 1166, (1980). Accordingly, the case is remanded to the district court to determine, after such hearing or hearings as it may see fit, whether or not there is still a live controversy concerning the proposed class, and, if so, whether this action should be certified as a class action in accordance with the provisions of rule 23, Fed. R. Civ. P., and whether or

not appellant Taylor is a proper class representative. If the district court should determine that there is a live controversy and that the cause should be certified as a class action but that Mr. Taylor is not a proper class representative, it should substitute an appropriate class representative should one desire to be appointed.

REMANDED for further proceedings consistent with this opinion.

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 79-3843

MCKINLEY TAYLOR, individually and on behalf of all persons similarly situated,

Plaintiff-Appell

v.

ROADWAY EXPRESS, INC.,

Defendant-Appel

Appeal from the United States District Court for th Southern District of Mississippi

Before HILL, GARZA, and THOMAS A. CLARK, Cir Judges.

BY THE COURT:

On October 26, 1979, the district court entered an or adopting the Report and Recommendations of the Un States Magistrate and rendering judgment for defendant-appellee. When the district court entered order, the transcript of the proceedings before Magistrate had not yet been received. Under our rec

decision in **Livas v. Teledyne Movible Offshore, Inc.**, 607 F.2d 118 (5th Cir. 1979), the court should have awaited the transcript before rendering a decision. Realizing its error, the court, on December 18, 1979, set aside the order and deferred further action until such time as it received the transcript. Although appellant filed his notice of appeal prior to December 18, appellee has moved to dismiss the appeal on the grounds that the October 26th order no longer is final and appealable.

Because the order was final when rendered and appellant filed a timely notice of appeal, we have jurisdiction to hear the appeal. There being no indication that the district court was acting on a Rule 60 motion, Fed. R. Civ. P. 60, we find that the court technically was without jurisdiction when it set aside the order. However, since it appears that the transcript is now available, we remand the case to allow the district court the opportunity to reconsider its October 26th order. If the court decides to adhere to the order, the case will be returned to this court. A new notice of appeal will not be required. If, upon reconsideration, a superceding order is entered, this appeal will be dismissed and a new notice of appeal will be necessary if the losing party wishes to appeal the new order.

The motion to dismiss the appeal is denied, and the case is remanded to the district court for proceedings consistent with this opinion.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF MISSISSIPPI

JACKSON DIVISION

CIVIL ACTION NO. J79-0338(N)

J78-0174(N)

MCKINLEY TAYLOR — PLAINTIFF

VS.

ROADWAY EXPRESS, INC. — DEFENDANT

REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE

Plaintiff, McKinley Taylor, a black male, alleges that his discharge from defendant company during his 30-day probationary period as an over-the-road truck driver was for racially discriminatory reasons, in violation of 42 U.S.C. §1981, Title VII and the 13th Amendment to the United States Constitution.

Taylor filed a "job seeker" form expressing interest in employment as an over-the-road truck driver at defendant's Meridian, Mississippi, terminal on January 11, 1978. Two weeks later, plaintiff took the next step in the hiring process, completion of an application for employment. An appointment was made for him to take a security interview with a polygraph examiner, and on February 9, 1978, Taylor was sent to Dr. P.R. Stodard for a pre-employment physical examination. This examination revealed that plaintiff was overweight and had high blood pressure and hypertension, disqualifying him an an over-the-road driver under both Roadway and Department of Transportation standards. Plaintiff was reexamined by Dr.

Stodard on February 17, 1978, at which time his weight and blood pressure fell within acceptable hiring standards. By February 21, 1978, all pre-employment forms, including PR-15, (Request for Employment Information from plaintiff's last employer), were completed, and plaintiff began work as a probationary road driver on February 22, 1978.

On March 6 1978, Gary R. Denton assumed the duties of the Manager of District VII, with jurisdiction over the Meridian, Mississippi, facility. Company policy required the District Manager to review the personnel files of all prospective applicants for road driver positions before they were hired as probationary employees. During the transition period when Denton's predecessor was winding up his duties in Meridian and Denton was assuming his duties, some employees were hired without District Manager approval, contrary to company policy. On March 17, 1978, Denton was given a stack of personnel files for his review. Some of these persons were prospective employees; others, including Taylor, were already probationary employees. At this time Denton had not met Taylor, and prior to reviewing his file, did not know his race. Certain matters gleaned from Taylor's personnel file led Denton to conclude that although plaintiff possessed the techinical skills necessary to operate a truck, he did not compare favorably with Roadway's ideal standards for over-the-road drivers and that better qualified personnel could be found.

Denton found in his review of the file certain discrepancies in Taylor's job seeker application, his application for employment, and his pre-employment security interview. The security interview report also contained pre-test admissions of thefts from previous employers (keeping overages), a discharge for refusal to work over the Christmas holidays and inability to get along with his last employer, some use of marijuana (and perhaps

the sale of a limited amount). and drinking beer on a previous job. Taylor had two reckless driving arrests and one speeding ticket. Denton was also suspicious of the fact that in the week between Taylor's two physical examinations he was able to lose 15 pounds and bring his blood pressure down from 178/112 to acceptable limits. Denton testified that no single matter in this list was a bar to employment, but that the combination of so many undesirable traits caused him to veto Taylor for permanent employment with Roadway. Because his probationary period was near an end, Taylor was terminated immediately.

Twenty-nine personnel files of permanent employees were introduced by plaintiff at trial. One or more of these undesirable characteristics appeared in each file, but none contained the number that was present in plaintiff's file. Denton testified that some of the employees with fewer objectionable qualities (hired by his predecessor) would not have been acceptable to him.

Defendant company was party to a Consent Order entered in **United States of America v. Roadway Express,** No. (-68-321) in the United States District Court for the Northern District of Ohio (1970). This Consent Order expressly provided:

> *No applicants shall be disqualified on the basis of any requirement that is not functionally related to the job for which the applicant is being considered, or is more stringent than necessary to perform the job.*

Defendant does not contend that plaintiff could not manually perform the work, but does aver that the hiring of persons with good health, safe driving records, honesty and integrity, who are free from alcohol and drug use (especially on the job), is reasonably related to the carrier's

legitimate interest in obtaining safe and trustworthy over-the-road drivers.

Plaintiff made out his prima facia case of discrimination under **McDonnell Douglas Corporation v. Green,** 93. S.Ct. 1817 (1973). After the articulation by the defendant of the legitimate non-discriminatory reasons for plaintiff's discharge, the burden remained with the plaintiff to prove these reasons a pretext for discrimination. **Board of Trustees v. Sweeney,** 58 L.Ed.2d 216 (1978). Plaintiff has failed in this third step.

While Plaintiff's termination may have been a matter of poor judgment, or based on requirements arguably not functionally related to the job, or simply as plaintiff himself stated, "a mistake", it has not been shown that race was a factor in the decision. Denton did not know Taylor and had no reason to hold ill feelings toward him. His decision appears to have been motivated by the desire to hire the best men possible for the job. The conclusion that race was not a factor in plaintiff's termination is supported generally by the showing by Roadway that while 30% of its applicants for the road driver position at the Meridian station during January 1978 through June 1979 are black, blacks constituted 35% of the hires. It cannot be said, therefore, that the criteria applied had a disparate impact upon blacks. **Griggs v. Duke Power Company,** 91 S.Ct. 849 (1971).

For the foregoing reasons, the Magistrate respectfully recommends that judgment be rendered for the Defendant.

RESPECTFULLY SUBMITTED,

Jackson, Mississippi

/s/ John Countiss
UNITED STATES MAGISTRATE

October 5, 1979

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 79-3843

MCKINLEY TAYLOR, individually and
on behalf of all persons
similarly situated,

Plaintiffs-Appellants,

versus

ROADWAY EXPRESS, INC.,

Defendant-Appellee.

Appeal from the United States District Court for the
Southern District of Mississippi

ON PETITION FOR REHEARING

( )

Before GEE, RUBIN and RANDALL, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby denied.

ENTERED FOR THE COURT:

/s/ THOMAS GILLS GEE
United States Circuit Judge

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF MISSISSIPPI

JACKSON DIVISION

MCKINLEY TAYLOR, individually
and on behalf of all persons
similarly situated, PLAINTIFF

VS. Civil Action Nos. J78-0174(N) & J79-0338(N)

ROADWAY EXPRESS, INC., DEFENDANT

ORDER

In view of the Opinion rendered by the United States Court of Appeals for the Fifth Circuit dated March 11, 1980 remanding this case back to this Court, we hereby rule as follows:

The Court, after having reviewed the record in its entirety, hereby adheres to the previous Order entered on October 26, 1979, adopting the Report and Recommendation of the United States Magistrate.

SO ORDERED, this the 26th day of March, 1980.

Biloxi, Mississippi /s/ Walter L. Nixon, Jr.
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTIRCT COURT

SOUTHERN DISTRICT OF MISSISSIPPI

JACKSON DIVISION

MCKINLEY TAYLOR, individually and on behalf of all persons similarly situated PLAINTIFF

VS.

CIVIL ACTION NO. J79-0338(N)
CIVIL ACTION NO.J78-0174(N)

ROADWAY EXPRESS, INC. DEFENDANT

ORDER

This cause is before the court on Motion Sua Sponte. After realizing that no transcript was submitted to the Court prior to our Order entered on October 26, 1979, which adopted the Report and Recommendation of the United States Magistrate, we now conclude that such Order was premature and should be set aside.

IT IS THEREFORE ORDERED that this Court's Order entered on October 26, 1979, be set aside until we have opportunity to review the transcript.

SO ORDERED this the 18th day of December, 1979.

Biloxi, Mississippi /s/ Walter L. Nixon, Jr.
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF MISSISSIPPI

JACKSON DIVISON

CIVIL ACTION NO. J79-0338(N)
J78-0174(N)

MCKINLEY TAYLOR — PLAINTIFF

VS.

ROADWAY EXPRESS, INC. — DEFENDANT

ORDER

This cause has come on this date to be heard upon the Report and Recommendation of the United States Magistrate, after referral of hearing by this Court. This Court, after having considered plaintiff's objections and after being fully advised in the premises, finds the plaintiff's objections to the Magistrate's report to be without merit.

IT IS THEREFORE, ORDERED that the Report and Recommendation of the United States Magistrate be, and the same is hereby adopted as the finding of the Court, and judgment is rendered for the Defendant

ORDERED this 23rd day of October, 1979.

Biloxi, Mississippi

/s/ Walter L. Nixon, Jr.
UNITED STATES DISTRICT JUDGE